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Substantively Consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities LLC and
the estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

BAM L.P., MICHAEL MANN, MERYL MANN
Defendants.

No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 10-04390 (SMB)

**TRUSTEE'S MEMORANDUM OF LAW IN SUPPORT OF THE
TRUSTEE'S MOTION *IN LIMINE* NUMBER 2 TO CONFIRM ALL
REQUESTS FOR ADMISSION AS DEEMED ADMITTED**

Irving H. Picard (“Trustee”), as trustee for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. § 78aaa et seq., and the chapter 7 estate of Bernard L. Madoff (“Madoff”), respectfully submits this memorandum of law and the Declaration of Dean D. Hunt in Support of the Trustee’s motion *in limine* #2 (“Hunt Decl.”) under Rule 36 of the Federal Rules of Civil Procedure (the “Rules”), made applicable here by Rule 7036 of the Federal Rules of Bankruptcy Procedure, for entry of an Order confirming all Requests for Admission served on Defendants are deemed admitted.

I. Relevant Facts and Procedural History

On January 5, 2015, the Trustee served individual sets of Requests for Admission to Defendants BAM L.P., Meryl Mann and Michael Mann (the “RFAs”) with responses due thirty days thereafter, on February 4, 2015.¹ Defendants failed to provide any objections or responses to the Trustee’s RFAs. On February 10, 2015, the Trustee sent a letter to Defendants regarding the Defendants’ multiple discovery deficiencies, including their failure to respond to the Trustee’s RFAs. Defendants did not respond to this correspondence.² On September 16, 2015, the Trustee sent another email to Defendants regarding their outstanding discovery responses. Defendants’ counsel responded that she would “look this over,” but, to date, Defendants still have not responded to the Trustee’s RFAs.³

II. The Trustee’s Requests for Admission to Defendants Are Deemed Admitted under Federal Rule of Procedure 36

Federal Rule of Civil Procedure 36(a)(3) (“Rule 36(a)(3)”), made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7036, provides that “[a] matter is admitted

¹ See Hunt Decl. Ex. 5 (January 5, 2015 correspondence serving the RFAs and the RFAs themselves).

² See Hunt Decl. Ex. 6 (February 10, 2015 correspondence to Defendants).

³ See Hunt Decl. Ex. 7 (September 16, 2015 correspondence to Defendants).

unless, within 30 days after being served, the party to whom the request is directed serves on the requesting part a written answer or objection addressed to the matter and signed by the party or its attorney.” Fed. R. Civ. P. 36(a)(3); *see also S.E.C. v. Dynasty Fund, Ltd.*, 121 Fed. App’x. 410, 411 (2nd Cir. 2005) (not an abuse of discretion to find RFAs were admitted because Defendant failed to timely respond); *Brumby v. Sharinn & Lipshie, P.C., et al.*, 2011 WL 6396385 at *1 (E.D.N.Y. May 23, 2011) (“Rule 36 is self executing. If the requests were duly served and not timely responded to, they are deemed admitted”). Therefore, due to Defendants’ failure to respond to the Trustee’s RFAs, they are deemed admitted pursuant to Rule 36(a)(3).⁴

CONCLUSION

The Trustee respectfully requests an order confirming the Trustee’s RFAs are admitted.

Dated: November 19, 2018
New York, New York

/s/ Dean D. Hunt
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⁴ The adversary proceeding at issue here, is similarly postured to APN 10-04841, *Picard v. Bernfeld*, APN 10-05743, *Picard v. Bernfeld Trust*, and APN 10-04918, *Picard v. Bellini* in which this Court ordered that the Trustee’s Requests for Admission to Defendants in each proceeding were deemed admitted under Federal Rule of Civil Procedure 36(a) because Defendants failed to timely object or respond. *See* Docket Nos. 24, 19 and 17, respectively.